

## Message Text

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ACTION L-03

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TAGS: EWWT, PORG, IMCO  
SUBJECT: IMCO: THIRTY-FOURTH SESSION OF LEGAL COMMITTEE  
LONDON, 9-13 JANUARY 1978

1. SUMMARY: ALMOST ALL OF THE THIRTY-FOURTH SESSION OF THE LEGAL COMMITTEE WAS OCCUPIED BY A WIDE RANGING DISCUSSION ON WHAT FORM A CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE RESULTING FROM THE CARRIAGE OF DANGEROUS AND HAZARDOUS SUBSTANCES BY SEA MIGHT TAKE. FOR PURPOSES OF DISCUSSION THE SUBJECT MATTER WAS DIVIDED INTO FOUR AREAS: RISKS COVERED AND NATURE OF DAMAGE; PARTIES LIABLE; NATURE OF LIABILITY (I.E., STRICT OR FAULT); EXTENT OF LIABILITY (I.E., MONETARY LIMITS). WHILE NO DELEGATION HAD DEFINITIVE PROPOSALS ON EACH AREA OF CONSIDERATION, MANY HAD WELL FORMED OPINIONS ON SOME FEATURES THEY FELT ANY NEW CONVENTION SHOULD CONCERN. END SUMMARY.

2. ON THE ISSUE OF RISKS COVERED AND NATURE OF DAMAGE THERE APPEARED SOME AGREEMENT THAT FIRE, EXPLOSION OR TOXICITY DAMAGE AND NOT JUST POLLUTION DAMAGE SHOULD BE COVERED. THERE WAS LONG DEBATE ON THE NUMBER AND TYPE OF HAZARDOUS SUBSTANCES TO BE COVERED. SUGGESTIONS RANGED FROM A VERY LIMITED NUMBER TO INCLUSION OF ALL THE ITEMS  
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LISTED IN THE IMCO DANGEROUS GOODS CODE AND ANNEX II OF MARPOL 73. THE USSR DELEGATE SUGGESTED THAT THE DISCUSSION SHOULD BE LIMITED TO LN6. THE MAJORITY SEEMED TO FAVOR A LIMITED LIST OF ULTRA-HAZARDOUS SUBSTANCES TO BE ARRIVED AT FROM SUGGESTIONS BY TECHNICAL EXPERTS.

3. ON THE ISSUE OF WHAT PARTIES SHOULD BE LIABLE THE

DISCUSSION SEEMED TO SETTLE ON A DIVISION OF LIABILITY BETWEEN THE SHIPOWNER AND SHIPPER. SINCE IT WAS GENERALLY AGREED THAT THE CONVENTION SHOULD HAVE PREVENTATIVE ASPECTS AS WELL AS COMPENSATION BENEFITS, IT WAS FELT THE SHIPPER SHOULD BEAR SOME BURDEN OF LIABILITY. THIS WOULD ENSURE THE SHIPPER'S COOPERATION IN PROPER METHODS OF PACKAGING, SAFEGUARDS AND EVEN MANUFACTURE. OTHER PARTIES MENTIONED INCLUDED THE MANUFACTURER, INSURER, CONSIGNOR AND PERSON RESPONSIBLE FOR THE PACKAGING. AS MIGHT BE EXPECTED THE MAJORITY FAVORED PUTTING THE GREATEST BURDEN ON THE SHIPPER, WITH THE SHIPOWNER ABLE TO LIMIT UP TO THE LIMITS OF THE 76 LIMITATION OF LIABILITY CONVENTION. THE SHIPPER WOULD BE LIABLE BEYOND THAT UP TO SOME SORT OF "CATASTROPHE LIMIT" TO BE PROVIDED IN THE NEW CONVENTION.

4. ON THE NATURE OF LIABILITY THERE SEEMED TO BE AGREEMENT THAT IT BE SOME VERSION OF STRICT LIABILITY. IT WAS SUGGESTED HOWEVER THAT IT COULD BE STRICT AS BETWEEN PARTY LIABLE AND INNOCENT THIRD PARTY AND FAULT LIABILITY IN ANY RECOURSE ACTION BETWEEN THE SHIPOWNER AND SHIPPER. THE MAJORITY AGREED THAT THE INNOCENT THIRD PARTY SHOULD BE PROVIDED WITH THE MAXIMUM OPPORTUNITY FOR RECOVERY POSSIBLE.

5. NO DOLLAR FIGURE WAS DISCUSSED ON THE ISSUE OF EXTENT  
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OF LIABILITY. HOWEVER, IT WAS GENERALLY AGREED THAT THERE SHOULD BE SUCH A LIMIT PER INCIDENT, I.E., A "CATASTROPHE LIMIT." SOME DELEGATIONS FAVORED REQUIRING THE SHIPPER TO PROVIDE COMPULSORY INSURANCE UP TO THAT LIMIT, WITH THE SHIPOWNER ONLY LIABLE TO THE LIMITS OF THE 76 CONVENTION; ESSENTIALLY A TIERED SYSTEM OF LIABILITY.

6. OTHER ITEMS WERE DISCUSSED BRIEFLY, I.E., THE GEOGRAPHICAL SCOPE OF THE CONVENTION AND THE PARTIES ENTITLED TO COMPENSATION. THROUGHOUT THE DISCUSSIONS MANY COMPLEX AND CONTENTIOUS ISSUES WERE AILED. NEVERTHELESS THE WILLINGNESS OF THE COMMITTEE TO FORGE AHEAD IN FUTURE MEETINGS WITH CONSIDERATION OF THIS NEW CONVENTION REVEALS THE GREAT CONCERN THE MAJORITY OF THE DELEGATIONS HAVE ABOUT THE CARRIAGE OF DANGEROUS SUBSTANCES BY SEA. IT WAS AGREED THAT THE THIRTY-SIXTH AND THIRTY-SEVENTH SESSIONS OF THE LEGAL COMMITTEE SHOULD BE DEVOTED ALMOST EXCLUSIVELY TO THIS ISSUE.

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## Message Attributes

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